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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Amendment of the Commission's Rules)
to Permit Flexible Service Offerings)
in Commercial Mobile Radio Services)

WT Docket No. 96-6

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules¹ and in response to the Commission's First Report & Order and Further Notice of Proposed Rulemaking,² hereby submits comments on the issues raised therein. RCA urges the Commission to regulate fixed CMRS wireless service offerings in the same manner that it governs other CMRS offerings. Consistent with this objective, the Commission should preempt State and local regulation of fixed wireless services offered by CMRS licensees, except where such services are found to be a replacement for wireline services. RCA also submits that cellular fixed services should be regulated under the same policies which govern

¹/ 47 C.F.R. § 1.415.

²/ FCC 96-283 (released August 1, 1996) ("Report and Further Notice").

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Personal Communications Service ("PCS") fixed services. In support thereof, RCA shows the following:

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the Nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. RCA is an active participant in this proceeding, having submitted comments in response to the initial Notice of Proposed Rulemaking issued in this docket.³

I. INTRODUCTION

The Commission determined in 1994 that auxiliary services provided by mobile service licensees and ancillary services offered by PCS providers are to be subject to the same regulatory treatment as mobile services.⁴ The rules were intended to allow CMRS licensees to offer fixed services that compliment or support mobile service offerings.⁵ In the initial Notice of Proposed Rule Making issued in the instant proceeding earlier this year, the Commission proposed to expand the category of fixed wireless services a CMRS

³/ See Comments of the Rural Cellular Association, filed March 1, 1996.

⁴/ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act: Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, para. 36 (released March 7, 1994) ("CMRS Second Report and Order").

⁵/ Report and Further Notice at para. 6.

licensee may offer.⁶ Having determined that the public interest is served by permitting CMRS licensees to offer a greater variety of services, including fixed services, the Commission now seeks comment on the appropriate regulatory treatment for fixed wireless services.

II. FIXED WIRELESS SERVICES SHOULD BE SUBJECT TO THE SAME FEDERAL REGULATORY TREATMENT AS OTHER CMRS SERVICES.

The Commission should promote and maintain a uniform regulatory approach to all CMRS services. Consistency in regulatory treatment of all services developed from wireless technologies will encourage technological advancement, spur economic and rational deployment of facilities, remove investment uncertainties, and promote administrative efficiencies.

The public interest value of uniform regulatory standards has already been recognized by the Commission. When finding that symmetrical regulation of PCS and CMRS is in the public interest, the Commission presented principles that are equally applicable to the instant proceeding. The Commission declared its commitment to creating a regulatory framework that fosters the creation of a "ubiquitous communications web that extends access to a multiplicity of transmission capabilities."⁷ A predictable, uniform standard of regulation for all services which CMRS

^{6/} See In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services: Notice of Proposed Rule Making, WT Docket No. 96-6, 11 FCC Rcd 2445 (released January 25, 1996).

^{7/} Id. at para. 26.

licensees offer will ensure administrative efficiency and encourage further investigation of and investment in multi-technology network design.

The Commission has also observed that the construction of integrated networks, in which mobile, fixed wireless, wireline, and cable facilities are blended into seamless networks, could be discouraged if individual CMRS licensees are subject to multiple layers of regulation.⁸ The Commission should, therefore, apply a consistent regulatory design to all CMRS offerings, including fixed wireless services. Furthermore, the Commission should, consistent with Section 332 of the Communications Act of 1934, as amended,⁹ preempt State or local regulation of fixed wireless services until such time as those services are found to be a substitute for land line service.

Section 332 prescribes measured Commission preemption of State or local regulation of wireless services. The Act provides specifically that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service."¹⁰ The Act also provides a limited exception to this prohibition: State or local regulation may be imposed where "such [CMRS] service is a replacement for land line telephone exchange service for a substantial portion of the

⁸/ Report and Further Notice at para. 40.

⁹/ 47 U.S.C. § 332.

¹⁰/ 47 U.S.C. § 332(c)(3)(A).

telephone land line exchange service within such state."¹¹ Section 332, therefore, clearly mandates preemption of all State or local regulation of CMRS wireless services without reference to their utilization until such time as those services are found to be a replacement for land line service. Compliance with this mandate furthers the public interest goals enunciated by the Commission in its Report and Further Notice. Therefore, as mandated by Congressional directive as set forth in Section 332, the Commission should preempt State or local regulation of fixed wireless services until such time as those services are found to serve as a substitute for wireline service.

III. A SINGLE REGULATORY POLICY SHOULD APPLY TO BOTH CELLULAR AND PCS PROVIDERS.

A common, uniform regulatory policy should apply to both cellular and PCS providers. The Commission has noted that among the principle objectives in the 1993 amendment of Section 332 is the aim to "ensure that similar services . . . be subject to consistent regulatory classification."¹² In implementing Section 332, the Commission sought to create an environment which encourages technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs,¹³ all of which characterize a vibrant marketplace. The Commission determined that "even-handed regulation," rather than asymmetrical

¹¹/ 47 U.S.C. § 332(c)(3)(A)(ii).

¹²/ CMRS Second Report and Order at para. 13.

¹³/ Id. at para. 19.

policies, would lower prices, generate jobs, and produce economic growth.¹⁴ Because cellular and PCS are similar and competing services, a symmetrical regulatory structure should be applied. The Commission noted that the Conference Report on the Omnibus Budget Reconciliation Act of 1993 explained the intent of Congress to be that "consistent with the public interest, similar services are accorded similar regulatory treatment."¹⁵ RCA respectfully urges the Commission to maintain this regulatory approach and apply to cellular fixed wireless services the same regulatory policies that govern PCS fixed wireless services. The resultant administrative efficiency will stimulate innovation and exploration in the marketplace and further the public interest policies enunciated by the Commission.

IV. CONCLUSION

As demonstrated herein, symmetrical regulation of all CMRS offerings, including fixed wireless services, will result in greater consumer choice, lower prices, and economic growth. Consistent with this approach, the Commission should prescribe Federal preemption of state or local regulation of fixed wireless services. RCA submits that the public interest will be served by according fixed wireless services the same regulatory treatment accorded to other CMRS services. Consistent with this approach,

¹⁴/ Id.

¹⁵/ Id. at para. 13.

the Commission should maintain its symmetrical regulatory treatment of both cellular and PCS services.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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November 25, 1996

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, do hereby certify that on this 25th day of November, 1996, a copy of the foregoing **Comments of the Rural Cellular Association in CC Docket No. 96-6** was served by hand delivery on the parties indicated below.


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